## Flores, Priscilla (Feliciano)

**From:** Gray, Davidj
**Sent:** Tuesday, August 19, 2014 2:55 PM
**To:** Murphy, Thelma (Hamilton)
**Subject:** FW: FOIA Assignment for EPA-R1-2014-009580
**Attachments:** DEP Salt-Snow Policies.pdf

As I noted in my last email, here is the correspondence with the RIT student.

djg

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**From:** Davidj Gray [mailto:gray.davidj@epamail.epa.gov]
**Sent:** Tuesday, August 19, 2014 2:23 PM
**To:** Gray, Davidj
**Subject:** Fw: multi-sector permit - application to salted sand piles

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----- Forwarded by Davidj Gray/R1/USEPA/US on 08/19/2014 02:22 PM -----

From: Davidj Gray/R1/USEPA/US
To: Kathleen Woodward/R1/USEPA/US@EPA
Date: 07/06/2006 02:49 PM
Subject: Fw: multi-sector permit - application to salted sand piles

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Hi Kathleen - I came across this email exchange while looking for something else...

djg

----- Forwarded by Davidj Gray/R1/USEPA/US on 07/06/2006 02:47 PM -----

**Davidj Gray/R1/USEPA/US**

To Kathleen Woodward/R1/USEPA/US

03/17/2005 04:01 PM

cc Ann Williams/R1/USEPA/US@EPA, Edie Goldman/R1/USEPA/US@EPA, Eric Perkins/R1/USEPA/US@EPA, mary.borg@anr.state.vt.us, MichaelG Lee/DC/USEPA/US@EPA, Mike Fedak/R1/USEPA/US@EPA, Steven Couto/R1/USEPA/US@EPA, Thelma Murphy/R1/USEPA/US@EPA

Subject Re: Fw: multi-sector permit - application to salted sand piles

Hi Kathleen,

I don't think the Stormwater Program has taken a position as to whether or not the failure to include containment of a salt (or sand-salt) pile as an existing or planned practice in their NOI/SWMP represents a significant deficiency. I am not aware of any instance where we have withheld authorization or required such a control after completing a more in depth review of a SWMP. Certainly, protection of uncovered piles would always be included in any recommendations for improvement of a SWMP. I have included below relevant excerpts from the Rule that appear to support this position (i.e. EPA only recommends that sand/salt storage be considered when developing SWMPs).

In case you are interested, I have attached MaDEP's road salt storage policy that addresses prohibitions in water supply protection areas.

*(See attached file: DEP Salt-Snow Policies.pdf)*

MS4 operator and another party such as post-development landowners (*e.g.*, homeowners' associations, office park owners, other government departments or entities), or regional authorities (*e.g.*, flood control districts, councils of government). These agreements typically require the post-construction property owner to be responsible for the O&M and may include conditions which: allow the MS4 operator to be reimbursed for O&M performed by the MS4 operator that is the responsibility of the property owner but is not performed; allow the MS4 operator to enter the property for inspection purposes; and in some cases specify that the property owner submit periodic reports.

In providing the guidance above, EPA intends the requirements in today's rule to be consistent with the permit application requirements for large MS4s for post-construction controls for new development and redevelopment. MS4 operators have significant flexibility both to develop this measure as appropriate to address local concerns, and to apply new control technologies as they become available. Storm water pollution control technologies are constantly being improved. EPA recommends that MS4s be responsive to these changes, developments or improvements in control technologies. EPA will provide more detailed guidance addressing the responsibility for long-term O&M of storm water controls in guidance materials. The guidance will also provide information on appropriate planning considerations, structural controls and non-structural controls. EPA also intends to develop a broad menu of BMPs as guidance to ensure flexibility to accommodate local conditions.

EPA received comments suggesting that requirements for new development be treated separately from redevelopment in the rule. The comment stressed that new development on raw land presents fewer obstacles and more opportunities to incorporate elements for preventing water quality impacts, whereas redevelopment projects are constrained by space limitations and existing infrastructure. Another comment suggested allowing waivers from the redevelopment requirements if the redevelopment does not result in additional adverse water quality impacts, and where BMPs are not technologically or economically feasible. EPA recognizes that redevelopment projects may have more site constraints which narrow the range of appropriate BMPs. Today's rule provides small MS4 operators with the flexibility to develop requirements that may be different for redevelopment projects, and may also include allowances for alternate or off-site BMPs at certain redevelopment projects. Non-structural BMPs may be the most appropriate approach for smaller redevelopment projects.

EPA received comments requesting clarification on what is meant by "pre-development" conditions within the context of redevelopment. Pre-development refers to runoff conditions that exist onsite immediately before the planned development activities occur. Pre-development is not intended to be interpreted as that period before any human-induced land disturbance activity has occurred.

EPA received comments on the guidance language in the proposed rule and preamble which suggest that implementation of this measure should "attempt to maintain pre-development runoff conditions" and that "post-development conditions should not be different than pre-development conditions in a way that adversely affects water quality." Many comments expressed concern that maintaining pre-development runoff conditions is impossible and cost-prohibitive, and objected to any reference to "flow" or increase in volume of runoff. Other comments support the inclusion of this language in the final rule. Similar references in today's rule relating to pre-development runoff conditions are intended as *recommendations* to *attempt* to maintain pre-development runoff conditions. With these recommendations, EPA intends to prevent water quality impacts resulting from increased discharges of pollutants, which may result from increased volume of runoff. In many cases, consideration of the increased flow rate, velocity and energy of storm water discharges following development unavoidably must be taken into consideration in order to reduce the discharge of pollutants, to meet water quality standards and to prevent degradation of receiving streams. EPA recommends that municipalities consider these factors when developing their post-construction storm water management program.

Some comments said that the quoted phrases in the paragraph above are directives that imply federal land use control, which they argue is beyond the authority of the CWA. EPA recognizes that land use planning is within the authority of local governments.

EPA disagrees, however, with the implication that today's rule dictates any such land use decisions. The requirement for small MS4 operators to develop a program to address discharges resulting from new development and redevelopment is essentially a pollution prevention measure. The Rule provides the MS4 operator with flexibility to determine the appropriate BMPs to address local water quality concerns. EPA recognizes that these program goals may not be applied to every site, and expects that MS4s will develop an appropriate combination of BMPs to be applied on a site-by-site, regional or watershed basis.

*vi. Pollution Prevention/Good Housekeeping for Municipal Operations.* Under today's final rule, operators of MS4s must develop and implement an operation and maintenance program ("program") that includes a training component and has the ultimate goal of preventing or reducing storm water from municipal operations (in addition to those that constitute storm water discharges associated with industrial activity). This measure's emphasis on proper O&M of MS4s and employee training, as opposed to requiring the MS4 to undertake major new activities, is meant to ensure that municipal activities are performed in the most efficient way to minimize contamination of storm water discharges.

The program must include government employee training that addresses prevention measures pertaining to municipal operations such as: parks, golf courses and open space maintenance; fleet maintenance; new construction or land disturbance; building oversight; planning; and storm water system maintenance. The program can use existing storm water pollution prevention training materials provided by the State, Tribe, EPA, or environmental, public interest, or trade organizations.

EPA also encourages operators of MS4s to consider the following in developing a program: (1) Implement maintenance activities, maintenance schedules, and long-term inspection procedures for structural and non-structural storm water controls to reduce floatables and other pollutants discharged from the separate storm sewers; (2) implement controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, waste transfer stations, fleet or maintenance shops with outdoor storage areas, and salt/sand storage locations and snow disposal areas operated by the MS4; (3) adopt procedures for the proper disposal of waste removed from the separate storm sewer systems and areas listed above in (2), including dredge

spoil, accumulated sediments, floatables, and other debris; and (4) adopt procedures to ensure that new flood management projects are assessed for impacts on water quality and existing projects are assessed for incorporation of additional water quality protection devices or practices. Ultimately, the effective performance of the program measure depends on the proper maintenance of the BMPs, both structural and non-structural. Without proper maintenance, BMP performance declines significantly over time. Additionally, BMP neglect may produce health and safety threats, such as structural failure leading to flooding, undesirable animal and insect breeding, and odors. Maintenance of structural BMPs could include: replacing upper levels of gravel; dredging of detention ponds; and repairing of retention basin outlet structure integrity. Maintenance of non-structural BMPs could include updating educational materials periodically.

EPA emphasizes that programs should identify and incorporate existing storm water practices and training, as well as non-storm water practices or programs that have storm water pollution prevention benefits, as a means to avoid duplication of efforts and reduce overall costs. EPA recommends that MS4s incorporate these new obligations into their existing programs to the greatest extent feasible and urges States to evaluate MS4 programs with programmatic efficiency in mind. EPA designed this minimum control measure as a modified version of the permit application requirements for medium and large MS4s described at 40 CFR 122.26(d)(2)(iv), in order to provide more flexibility for these smaller MS4s. Today's requirements provide for a consistent approach to control pollutants from O&M among medium, large, and regulated small MS4s.

By properly implementing a program, operators of MS4s serve as a model for the rest of the regulated community. Furthermore, the establishment of a long-term program could result in cost savings by minimizing possible damage to the system from floatables and other debris and, consequently, reducing the need for repairs.

EPA received comments requesting clarification of what this measure requires. Certain municipalities expressed concern that the measure has the potential to impose significant costs associated with EPA's requirement that operators of MS4s consider implementing controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, and salt/sand storage locations and snow disposal areas operated by the municipality. EPA disagrees that a requirement to *consider* such controls will impose considerable costs.

One commenter objected to the preamble language from the proposal suggesting that EPA does not expect the MS4 to undertake new activity. While it remains the Agency's expectation that major new activity will not be required, the MEP process should drive MS4s to incorporate the measure's obligations into their existing programs to achieve the pollutant reductions to the maximum extent practicable.

Certain commenters requested a definition for "municipal operations." EPA has revised the language to more clearly define municipal operations. Questions may remain concerning whether discharges from specific municipal activities constitute discharges associated with industrial activities (requiring NPDES permit authorization according to the requirements for industrial storm water that apply in that State) or from municipal operations (subject only to the controls developed in the MS4 control program). Even though there may be different substantive requirements that apply depending on the source of the discharge, EPA has modified the deadlines for permit coverage so that all the regulated municipally owned and operated sources become subject to permit requirements on the same date. The deadline is the same for permit coverage for this minimum measure as for permit coverage for municipally owned/operated industrial sources.

c. Application Requirements

An NPDES permit that authorizes the discharge from a regulated small MS4 may take the form of either an individual permit issued to one or more facilities as co-permittees or a general permit that applies to a group of MS4s. For reasons of administrative efficiency and to reduce the paperwork burden on permittees, EPA expects that most discharges from regulated small MS4s will be authorized under general permits. These NPDES general permits will provide specific instructions on how to obtain coverage, including application requirements. Typically, such application requirements will be satisfied by the submission of a Notice of Intent (NOI) to be covered by the general permit. In this section, EPA explains the small MS4 operator's application requirements for obtaining coverage under a NPDES permit for storm water.

*i. Best Management Practices and Measurable Goals,* Section 122.34(d) of today's rule requires the operator of a regulated small MS4 that wishes to implement a program under § 122.34 to identify and submit to the NPDES permitting authority a list of the best management practices ("BMPs") that will be implemented for each minimum control measure in their storm water management program. They also must submit measurable goals for the development and implementation of each BMP. The BMPs and the measurable goals must be included either in an NOI to be covered under a general permit or in an individual permit application.

The operator's submission must identify, as appropriate, the months and years in which the operator will undertake actions required to implement each of the minimum control measures, including interim milestones and the frequency of periodic actions. The Agency revised references to "starting and completing" actions from the proposed rule because many actions will be repetitive or ongoing. The submission also must identify the person or persons responsible for implementing or coordinating the small MS4 storm water program. See § 122.34(d). The submitted BMPs and measurable goals become enforceable according to the terms of the permit. The first permit can allow the permittee up to five years to fully implement the storm water management program.

Several commenters opposed making the measurable goals enforceable permit conditions. Some suggested that a permittee should be able to change its goals so that BMPs that are not functioning as intended can be replaced. EPA agrees that a permittee should be free to switch its BMPs and corresponding goals to others that accomplish the minimum measure or measures. The permittee is required to implement BMPs that address the minimum measures in § 122.34(b). If the permittee determines that its original combination of BMPs are not adequate to achieve the objectives of the municipal program, the MS4 should revise its program to implement BMPs that are adequate and submit to the permitting authority a revised list of BMPs and measurable goals. EPA suggests that permits describe the process for revising BMPs and measurable goals, such as whether the permittee should follow the same procedures as were required for the submission of the original NOI and whether the permitting authority's approval is necessary prior to the permittee implementing the revised

and from 122.34(b)

water quality. You are encouraged to provide appropriate educational and training measures for construction site operators. You may wish to require a storm water pollution prevention plan for construction sites within your jurisdiction that discharge into your system. See §122.44(s) (NPDES permitting authorities' option to incorporate qualifying State, Tribal and local erosion and sediment control programs into NPDES permits for storm water discharges from construction sites). Also see §122.35(b) (The NPDES permitting authority may recognize that another government entity, including the permitting authority, may be responsible for implementing one or more of the minimum measures on your behalf.)

(5) *Post-construction storm water management in new development and redevelopment.*

(i) You must develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into your small MS4. Your program must ensure that controls are in place that would prevent or minimize water quality impacts.

(ii) You must:

(A) Develop and implement strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for your community;

(B) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State, Tribal or local law; and

(C) Ensure adequate long-term operation and maintenance of BMPs.

(iii) Guidance: If water quality impacts are considered from the beginning stages of a project, new development and potentially redevelopment provide more opportunities for water quality protection. EPA recommends that the BMPs chosen: be appropriate for the local community; minimize water quality impacts; and attempt to maintain pre-development runoff conditions. In choosing appropriate BMPs, EPA encourages you to participate in locally-based watershed planning efforts which attempt to involve a diverse group of stakeholders including interested citizens. When developing a program that is consistent with this measure's intent, EPA recommends that you adopt a planning process that identifies the municipality's program goals (*e.g.*, minimize water quality impacts resulting from post-construction runoff from new development and redevelopment), implementation strategies (e.g., adopt a combination of structural and/or non-structural BMPs), operation and maintenance policies and procedures, and enforcement procedures. In developing your program, you should consider assessing existing ordinances, policies, programs and studies that address storm water runoff quality. In addition to assessing these existing documents and programs, you should provide opportunities to the public to participate in the development of the program. Non-structural BMPs are preventative actions that involve management and source controls such as: policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; policies or ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure; education programs for developers and the public about project designs that minimize water quality impacts; and measures such as minimization of percent impervious area after development and minimization of directly connected impervious areas. Structural BMPs include: storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters and filter strips; and infiltration practices such as infiltration basins and infiltration trenches. EPA recommends that you ensure the appropriate implementation of the structural BMPs by considering some or all of the following: pre-construction review of BMP designs; inspections during construction to verify BMPs are built as designed; post-construction inspection and maintenance of BMPs; and penalty provisions for the noncompliance with design, construction or operation and maintenance. Storm water technologies are constantly being improved, and EPA recommends that your requirements be responsive to these changes, developments or improvements in control technologies.

(6) *Pollution prevention/good housekeeping for municipal operations.*

(i) You must develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, your State, Tribe, or other organizations, your program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

(ii) Guidance: EPA recommends that, at a minimum, you consider the following in developing your program: maintenance activities, maintenance schedules, and long-term inspection procedures for structural and non-structural storm water controls to reduce floatables and other pollutants discharged from your separate storm sewers; controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas operated by you, and waste transfer stations; procedures for properly disposing of waste removed from the separate storm sewers and areas listed above (such as dredge spoil, accumulated sediments, floatables, and other debris); and ways to ensure that new flood management projects assess the impacts on water quality and examine existing projects for incorporating additional water quality protection devices or practices. Operation and maintenance should be an integral component of all storm water management programs. This measure is intended to improve the efficiency of these programs and require new programs where necessary. Properly developed and implemented operation and maintenance programs reduce the risk of water quality problems.

(c) If an existing qualifying local program requires you to implement one or more of the minimum control measures of paragraph (b) of this section, the NPDES permitting authority may include conditions in your NPDES permit that direct you to follow that qualifying program's requirements rather than the requirements of paragraph (b) of this section. A qualifying local program is a local, State or Tribal municipal storm water management program that imposes, at a minimum, the relevant requirements of paragraph (b) of this section.

(d)(1) In your permit application (either a notice of intent for coverage

Kathleen Woodward/R1/USEPA/US

**Kathleen Woodward/R1/USEPA/US**

03/17/2005 01:12 PM

To Thelma Murphy/R1/USEPA/US@EPA

cc Ann Williams/R1/USEPA/US@EPA, Davidj Gray/R1/USEPA/US@EPA, Edie Goldman/R1/USEPA/US@EPA, Eric Perkins/R1/USEPA/US@EPA,

mary.borg@anr.state.vt.us, MichaelG Lee/DC/USEPA/US@EPA, Mike Fedak/R1/USEPA/US@EPA, Steven Couto/R1/USEPA/US@EPA

Subject: Re: Fw: multi-sector permit - application to salted sand piles

Thelma-

How might VT's equivalent of the Region I MS4 permit come into this? I know there is no specific requirement to cover salt and/or sand piles in the MS4 permit or Phase II rule. Wouldn't we nevertheless consider a storm water mgt. program that failed to provide for covering salt and/or sand piles to be significantly deficient?

Kathleen

Kathleen
Thelma Murphy/R1/USEPA/US

**Thelma Murphy/R1/USEPA/US**

03/17/2005 11:40 AM

To: Ann Williams/R1/USEPA/US@EPA

cc: Davidj Gray/R1/USEPA/US@EPA, Edie Goldman/R1/USEPA/US@EPA, Eric Perkins/R1/USEPA/US@EPA, Kathleen Woodward/R1/USEPA/US@EPA, mary.borg@anr.state.vt.us, MichaelG Lee/DC/USEPA/US@EPA, Mike Fedak/R1/USEPA/US@EPA, Steven Couto/R1/USEPA/US@EPA

Subject: Re: Fw: multi-sector permit - application to salted sand piles

The MSGP does not require that a stand alone salt pile be covered or permitted. The requirement to cover a pile applies when a facility is already subject to the MSGP because of its industrial activity. If the facility is subject to the permit, and they also have salt storage, then they must cover the pile. This applies only if the runoff from the pile discharge to water of the U.S. The requirement is in the permit because of the human health and aquatic effects from storm water runoff containing salt.
There is no discussion in the MSGP about a pile of a sand/salt mixture.

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Ann Williams/R1/USEPA/US

**Ann Williams/R1/USEPA/US**

03/16/2005 05:54 PM

To: Thelma Murphy/R1/USEPA/US@EPA, Edie Goldman/R1/USEPA/US@EPA, Kathleen Woodward/R1/USEPA/US@EPA, Davidj Gray/R1/USEPA/US@EPA, Mike Fedak/R1/USEPA/US@EPA, Steven Couto/R1/USEPA/US@EPA, MichaelG Lee/DC/USEPA/US@EPA

cc: Eric Perkins/R1/USEPA/US@EPA, mary.borg@anr.state.vt.us

Subject: Fw: multi-sector permit - application to salted sand piles

Hi everyone -- does anyone happen to know the answer to the attached question? Thanks,
ann
----- Forwarded by Ann Williams/R1/USEPA/US on 03/16/2005 05:52 PM -----

**Mary Borg <mary.borg@anr.state.vt.us>**

03/16/2005 02:26 PM

To Ann Williams/R1/USEPA/US@EPA

cc

Subject multi-sector permit - application to salted sand piles

Hi Ann. I have a quick question regarding the multi-sector general permit. Can you please tell me where EPA has the authority to require:

1. That salted sand piles must apply for coverage; and

2. that they must automatically cover and meet no exposure status?

I've read the federal rules (40 CFR 122.26), the 1995 MSGP, fact sheet and responsiveness summaries and the 2000 MSGP, fact sheet and responsiveness summary. Although it is clear that "salt piles" are covered, that term is not defined and yet we understand that it has been interpreted to mean salted sand piles also. Also the definition of the term "industrial activities" does not clearly apply (although it is very broad by necessity). Has EPA brought in salted sand piles through the residual designation authority so that it is considered to be in Subsector AD of the sectors covered by the MSGP entitled "Reserved for Facilities Not Covered by Other Sectors and Designated by the Director?" Or is it considered to be under the general definition of "industrial activities?" Or have I missed something else altogether?

The Vermont legislature is discussing the costs of covering all of the salted sand piles in Vermont - estimates range as high as 20 million - and as you can well imagine, folks are wondering how this requirement came about. Can you please give me your read on the legal underpinnings of this requirement? If not, is there someone else at EPA (Region or Headquarters) who might know?

Thanks for your help. I always appreciate your input. Mary